IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.5755 OF 2004

1. Vasant Maruti Khatpe,
aged about 54 years.

2. Sudhir Maruti Khatpe,
aged about 41 years.

Both residing at 2139, Sadashiv
Peth, Pune 411 030. .... Petitioners

- Versus -

1. Smt. Bababai Nivrutti Pawar,
aged about 71 years.
(deleted vide order dt.23/8/04)

2. Vijay Nivrutti Pawar,
aged about 58 years.

3. Subhashchandra Nivrutti
Pawar, aged about 54 years.

4. Prakash Nivrutti Pawar,
aged about 52 years.

5. Suresh Nivrutti Pawar,
aged about 48 years.

6. Dnyaneshwar Nivrutti Pawar,
aged about 46 years.

7. Sunil Nivrutti Pawar,
aged about 43 years.

All residing at 32 Nana Peth,
Pune 411 002. .... Respondents

Shri K.Y. Mandlik for the Petitioners.

Shri R.A. Tekale for the Respondent
Nos.2 to 7.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: SEPTEMBER 20, 2004

ORAL JUDGMENT:

1. Heard the learned Advocates for the parties. Rule. By consent, rule made returnable forthwith.

2. The petitioners challenge the order passed by the Third Additional Small Causes Judge, Pune on 8-4-2004 below Exhibit-44 in Civil Suit No.722 of 998 rejecting the application for amendment of the plaint. The amendment was in the nature of addition of certain facts and joinder of the persons stated to be the sub-tenants. The application has been rejected on the ground that the same was filed beyond the period of three years from the date of knowledge about the sub-letting of the premises by the original tenant.

3. Upon hearing the learned Advocates for the parties and on perusal of the records, only point which arises for consideration is as to whether in a case where an application is filed by the landlord for joinder of the sub-tenants in the proceedings beyond the period of three years from the date of knowledge regarding the sub-letting of the premises, then such an application

will be liable to be dismissed on the ground of being barred by the law of limitation.

4. Drawing attention to the decision of the learned single Judge of this Court in the matter of **Sou. Shakuntala J. Gujar . Shri Dilip R. Pawar and another**, reported in 2001 (2) ALL M.R. 566, it is sought to be contended on behalf of the respondents that the application being barred by the law of limitation, no fault can be found with the impugned order and the view taken by the Court below clearly finds support from the said decision.

4. Undisputedly, the facts relevant for the decision are that the original suit is filed for eviction of the tenant in relation to the suit premises and in defence it is sought to be contended that after creation of the original lease, the sub-tenancy has been created in relation to the said premises in favour of different persons and the fact of sub-tenancy is to the knowledge of the plaintiffs. It is also sought to be contended that the plaintiffs came to be the owners of the premises since 1987. In view of the objection sought to be raised regarding non-joinder of the necessary parties i.e. to say the sub-tenants in relation to the suit premises, the application came to be filed by the plaintiffs for joinder of those persons along with the

relevant and consequential pleadings in the plaint. The said application being opposed, after hearing the parties, came to be dismissed by the impugned order. Hence the present petition.

5. As rightly submitted by the learned Advocate for the petitioners, only ground on which the application has been rejected is that the same has been filed beyond the period of three years from the date of knowledge about the creation of the alleged sub-tenancy in relation to the suit premises. Even assuming that the plaintiffs had knowledge about the creation of the sub-tenancy much prior to the period of three years, it is needless to say that once a person is inducted in the premises as a tenant or sub-tenant, he continues to carry that status of sub-tenancy till the said status is lawfully terminated. Being so, the cause of action for taking any action as contemplated under the rent legislation in favour of the landlord would arise till and until the relationship of landlord-tenant or the one between the tenant and the sub-tenant would subsist and till such relationship is put to an end by the procedure known to law. Bearing the same in mind, the cause of action which would arise for taking any action against the tenant or the sub-tenant in relation to acts giving rise for action under the statute applicable to the parties would be a continuing cause of action. Therefore,

merely because the application is filed for joinder of sub-tenants beyond the period of three years from the date of acquisition of knowledge, it could not be dismissed being barred by the law of limitation.

6. There is yet another reason for interference in the impugned order. There being a dispute between the parties as to the exact date about the entry of the alleged sub-tenants in the premises, it will be necessary for the parties to place on record the relevant pleadings in that regard and the Court below to frame proper issue to enable the parties to lead evidence in support of their rival contentions in that regard and on analysis of such evidence, the Court will have to arrive at the proper finding on that aspect. Being so, it is too premature to dismiss the application of the nature which has been filed by the petitioner at threshold on the alleged ground of bar of limitation.

7. The decision of the learned single Judge in the matter of **Sou. Shakuntala Gujar** (supra) was to the effect that the will having been executed by the deceased prior to April, 1990 and it was to the knowledge of the party and no steps having been taken in that regard for over a period of three years, the amendment in relation to the said will was held to be barred by the law of limitation. Once the will is

executed, the cause of action in relation to the will would commence from the date of the death of the person executing the will, particularly when there is no dispute about the knowledge of the will. Being so, any grievance to be made in relation to the will will have to be within the period of limitation prescribed for the same and such a cause of action would not be a recurring cause of action. It cannot be said that same rule will apply to a case of creation of tenant-landlord relationship which would continue to subsist till and until the same is put to an end by the procedure known to law and therefore the decision of the learned single Judge in Sou. Shakuntala Gujar's case has no application to the case in hand, nor it can justify the impugned order.

8. For the reasons stated above, therefore, the petition succeeds. The impugned order is hereby set aside. The application for amendment Exhibit-44 filed by the petitioners in Civil Suit No.722 of 1998 is hereby allowed. The amendment to be carried out within two weeks from the date of receipt of the writ of this Court by the trial Court. The rule is made absolute in above terms with no order as to costs.

9. Parties may be issued the authenticated copy of this order.